

§ 20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the ALJ may take such action as is just. This may include the following:

(a) Infer that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the proceeding, designated facts are established.

(c) Order that the party not introduce into evidence—or otherwise rely upon, in support of any claim or defense—the evidence that was withheld.

(d) Order that the party not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.

(e) Allow the use of secondary evidence to show what the evidence withheld would have shown.

§ 20.608 Subpoenas.

(a) Any party may request the ALJ to issue a subpoena for the attendance of a person, the giving of testimony, or the production of books, papers, documents, or any other relevant evidence during discovery or for any hearing. Any party seeking a subpoena from the ALJ shall request its issuance by motion.

(b) An ALJ may, for good cause shown, apply to the United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence.

(c) A person serving a subpoena shall prepare a written statement setting forth either the date, time, and manner of service or the reason for failure of service. He or she shall swear to or affirm the statement, attach it to a copy of the subpoena, and return it to the ALJ who issued the subpoena.

(d) Coast Guard investigating officers have separate subpoena power in S&R proceedings under 46 CFR 5.301.

§ 20.609 Motions to quash or modify.

(a) A person to whom a subpoena is directed may, by motion with notice to the party requesting the subpoena, ask the ALJ to quash or modify the subpoena.

(b) Except when made at a hearing, the motion must be filed:

(1) 10 days or less after service of a subpoena compelling the appearance and testimony of a witness or the production of evidence or

(2) At or before the time specified in the subpoena for compliance, whichever is earlier.

(c) If the subpoena is served at a hearing, the person to whom it is directed may, in person at the hearing or in writing within a reasonable time fixed by the ALJ, ask the ALJ to quash or modify it.

(d) The ALJ may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue.

Subpart G—Hearings**§ 20.701 Standard of proof.**

The party that bears the burden of proof shall prove his or her case or affirmative defense by a preponderance of the evidence.

§ 20.702 Burden of proof.

(a) Except for an affirmative defense, or as provided by paragraph (b) of this section, the Coast Guard bears the burden of proof.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order bears the burden of proof.

§ 20.703 Presumptions.

In each administrative hearing, a presumption—

(a) Imposes on the party against whom it lies the burden of going forward with evidence to rebut or meet the presumption; but

(b) Does not shift the burden of proof in the sense of the risk of non-persuasion.

§ 20.704 Scheduling and notice of hearings.

(a) With due regard for the convenience of the parties, and of their representatives or witnesses, the ALJ shall, as early as possible, fix the date, time, and place for the hearing and notify all parties and interested persons.